

*What Every Member of the
Trade Community Should Know About:*

The Agricultural Actual Use Provisions

Tariff Classification Issues of Headings
9817.00.50 and 9817.00.60



**U.S. Customs and
Border Protection**

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division of Regulations and Rulings is entitled “The Agricultural Actual Use Provisions”. It provides guidance regarding the classification of these items. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Part 177 of the CBP Regulations (19 C.F.R. Part 177), or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to U.S. Customs and Border Protection, Office of International Trade, Executive Director, Regulations and Rulings, 90 K Street N.E. 10th floor, Washington, D.C. 20229-1177.

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INTRODUCTION

The merchandise assignments of a typical Import Specialist team can cover a fairly wide variety of goods, ranging from automobiles or aircraft to specialized merchandise such as spraying appliances for etching, stripping or cleaning semiconductor wafers. It is not sufficient merely to know the proper classification of merchandise in Chapters 1-97 of the Harmonized Tariff Schedule of the United States (HTSUS). One must also be aware of and understand the requirements of Customs and Border Protection (CBP) and those of the numerous other agencies that affect importations, as well as the special classification provisions within Chapter 98 of the HTSUS which may change the classification of merchandise or rates of duty. Section XXII of the HTSUS ("Special Classification Provisions; Temporary Legislation; Temporary Modifications Established Pursuant To Trade Legislation; Additional Import Restrictions Established Pursuant to Section 22 of the Agricultural Adjustment Act, As Amended"), provides for secondary rates of duty for specific goods that meet the conditions of that Section.

Within Subchapter XVII of Section XXII of the HTSUS, which provides for "Other Special Classification Provisions," there are two special classification provisions associated with agriculture which have their own complexities that must be understood in order to be properly applied. These two provisions of the Harmonized Tariff Schedule of the United States (HTSUS) are:

9817.00.50 Machinery, equipment and implements to be used for agricultural or horticultural purposes

and

9817.00.60 Parts to be used in articles provided for in headings 8432, 8433, 8434 and 8436, whether or not such parts are principally used as parts of such articles and whether or not covered by a special provision within the meaning of additional U.S. rule of interpretation 1(c)

Almost all of the tariff provisions for goods used in agricultural pursuits found in Chapter 84 of the HTSUS provide for a free rate of duty. Additionally, the special classification provisions of headings 9817.00.50 and 9817.00.60, HTSUS, which provide for a free rate of duty, may be applied to any article that meets the terms of either of these headings. Generally, the goods covered by headings 9817.00.50 and 9817.00.60, HTSUS are articles which are used for agricultural purposes but which are not already classified under a duty-free agricultural provision. Among the key terms in these two special provisions is the phrase "to be used". This phrase makes these two headings **actual use** provisions. As such, an article must satisfy the statutory requirements set forth in Additional U.S. Rule of Interpretation 1(b), HTSUS, which reads as follows:

a tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended

at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered.

This rule governs the certification process of an actual use provision and will be further discussed later in this publication.

In all instances concerning these two provisions, it is imperative that the primary classification of a good must be established before proceeding with the rest of the process. Without this classification, it cannot be determined whether the article qualifies for consideration under heading 9817.00.50 or 9817.00.60, HTSUS.

It is also required that the merchandise be a product of a “column one” country¹ in order to be eligible for the Chapter 98 free rates of duty; otherwise, the rates of duty normally applicable in the absence of headings 9817.00.50 and 9817.00.60 will be imposed.

The purpose of this publication is to clarify the coverage of these provisions and to minimize the difficulties associated with the classification process. Furthermore, the certification process itself will be examined in detail and some useful guidelines covering intent and proof of use will be discussed.

THE THREE-PART TEST

The HTSUS consists of 99 chapters. The first 97 chapters form the international portion of the tariff that is utilized by all countries which have adopted the tariff. Chapters 98 and 99 of the HTSUS are United States chapters which have been added to the international portion by Congress. Virtually every item that is imported into the United States will receive a classification from within the first 97 chapters. Chapters 98 and 99 provide an additional classification that grants special treatment to qualifying articles.

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs), found at the beginning of the tariff. Once an article is classified using the GRIs and any pertinent section and chapter notes, consideration may be given to the special classification provisions, if appropriate. If an article is described by a provision of Chapter 98, HTSUS, and all applicable requirements are met, then the Chapter 98, HTSUS provision and its duty rate prevail over the classification and tariff rate from the international portion of the tariff. See Chapter 98, U.S. Note 1. The Chapter 98, HTSUS provision would then be the classification for purposes of importation into the United States.

Headquarters Ruling Letter (“HQ”) 086211, dated March 24, 1990, was the first of many U.S. Customs Service, now CBP, rulings to apply a three-part test to any good which claimed heading 9817.00.50 or 9817.00.60, HTSUS, treatment. CBP requires that

¹ The rates of duty in column 1 of the HTSUS are rates which are applicable to all products other than those of the following countries: North Korea; Cuba.

before an article can be classified in either of these headings the following three-part test must be applied:

- 1) The articles must not be among the long list of exclusions to heading 9817.00.50 or 9817.00.60 under Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2;
- 2) The terms of heading 9817.00.50 or 9817.00.60 must be met in accordance with GRI 1; and
- 3) The merchandise must meet the actual use conditions required in accordance with sections 10.131-10.139 of the Customs Regulations (19 CFR §§10.131-10.139).

A good must satisfy each part of the test. If a good fails any part of the test, then it is treated according to its primary classification.

PART 1 - EXCLUSIONS

The first and easiest part of the test requires referral to the long list of articles which are excluded from consideration under heading 9817.00.50 or 9817.00.60, HTSUS. This list is found in Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2, which reads as follows:

The provisions of headings 9817.00.50 and 9817.00.60 do not apply to:

- (a) articles provided for in chapter 25;
- (b) articles provided for in subheading 3212.10;
- (c) articles provided for in subheading 3926.90.30;
- (d) articles of leather or of fur on the skin;
- (e) articles of textile material;
- (f) articles provided for in section XIII (except heading 6808 and subheadings 6809.11, 7018.10, 7018.90, 7019.40, 7019.51, 7019.52 and 7019.59);
- (g) articles provided for in chapter 71;
- (h) articles provided for in chapter 72;
- (ij) articles provided for in chapter 73 (except subheadings 7308.10, 7308.20, 7308.40 and 7308.90, subheadings 7315.81 through 7315.89, subheadings 7319.40, 7325.10, 7325.91, 7326.11 and 7326.19);
- (k) articles provided for in chapter 74 (except subheadings 7419.10 and 7419.91);
- (l) articles provided for in chapter 75;
- (m) articles provided for in chapter 76 (except heading 7610);
- (n) articles provided for in chapter 78;
- (o) articles provided for in chapter 79 (except gutters, roof capping, skylight frames and other fabricated building components, of zinc);
- (p) articles provided for in chapter 80;

- (q) articles provided for in chapter 81 (except subheadings 8101.99 and 8102.99);
- (r) articles provided for in chapter 82;
- (s) articles provided for in chapter 83;
- (t) articles provided for in subheadings 8419.81.50, 8419.81.90, 8427.10, 8427.20, 8427.90 and 8431.20, headings 8432, 8433 and 8434, subheadings 8435.10 and 8435.90, heading 8436, subheadings 8438.80, 8468.10, 8472.90.40 and 8479.89, subheadings 8482.10.10 through 8482.99.65 (other than subheading 8482.91) and subheadings 8483.10.50 and 8485.10;
- (u) articles provided for in chapter 85 (except subheadings 8519.81.20, heading 8523, subheadings 8532.90 and 8539.90, heading 8542, subheadings 8543.11 through 8543.30, subheadings 8543.70.60, 8543.70.80; 8543.70.85; 8543.70.92; 8543.70.96, 8543.89.93, 8543.90, 8544.70, 8546.90, 8547.20 and 8548.90);
- (v) articles provided for in chapter 86;
- (w) articles provided for in chapter 87 (except bicycles and other cycles, not motorized, and parts thereof), but interchangeable agricultural and horticultural implements are classifiable in subheading 9817.00.50 even if mounted at the time of importation on a tractor provided for in chapter 87;
- (x) articles provided for in chapter 88 (except heading 8805);
- (y) articles provided for in chapter 89 (except headings 8901, 8902 and 8904, subheadings 8905.10 and 8905.20, and headings 8907 and 8908);
- (z) articles provided for in subheadings 9006.69.01, 9032.89.20, 9032.89.40, 9032.90.20 and 9032.90.40;
- (aa) articles provided for in subheadings 9101.19.20, 9102.12, 9102.91.20, 9103.10.20, 9104.00.05 and 9104.00.45;
- (ab) articles provided for in heading 9405 (except subheadings 9405.60.60 and 9405.92);
- (ac) articles provided for in subheadings 9505.10.10, 9506.21.40 and 9506.21.80;
- (ad) articles provided for in subheading 9603.50.00, headings 9604.00.00 and 9605.00.00 and subheading 9616.10.00; or
- (ae) articles provided for in heading 9705.

Therefore, if the primary classification of an article is within one of the provisions enumerated in Note 2, it has failed the first part of the test. Then, the actual use certification process stops at this point, and duties will be assessed at the rate prescribed by the primary classification, assuming no other special provisions or programs apply. Examples of this exclusionary action may be found in several rulings. In NY 878847, dated October 2, 1992, steel rakes properly classifiable under subheading 8201.30.00, HTSUS, were excluded from the agricultural provision based upon Note 2(r). In NY 892189, dated November 26, 1993, aluminum wire stakes used in the gardening marketplace commercially throughout the United States for supporting plants properly classifiable in subheading 7616.90 (currently subheading 7616.91), HTSUS, were excluded from the special agricultural provision by Note 2(m). Finally, in

HQ 954656, dated July 28, 1993, a crop dusting airplane properly classified in subheading 8802.20, HTSUS, was excluded from the special agricultural provision by Note 2(x).

PART 2 – HEADING TEXT

IMPORTANT TERMS

The second part of the test calls for the merchandise to be included within the terms of heading 9817, HTSUS, as required by application of GRI 1. For heading 9817.00.50, HTSUS, this means that the good must be "machinery", "equipment" or "implements" used for "agricultural or horticultural purposes". For heading 9817.00.60, HTSUS, this means that the goods must be "parts" and that they be "used in the machinery of headings 8432, 8433, 8434 or 8436 [HTSUS]." The heading indicates that goods are classified there "whether or not such parts are principally used as parts of such articles" and "whether or not covered by a special provision within the meaning of additional U.S. Rule of Interpretation 1(c)." For further discussion within this publication see *Certification of Parts under Heading 9817.00.60*.

Heading 9817.00.50

As for the terms of heading 9817.00.50, HTSUS, we will refer to the definitions found in *The Merriam-Webster's Collegiate Dictionary, Tenth Edition* (1999). It must be emphasized rather strongly that these definitions are for the purposes of heading 9817.00.50, HTSUS, only and should not be applied to any other headings.

Machine: 1. f: A mechanically, electrically or electronically operated device for performing a task.

Equipment: 1. a: the set of articles or physical resources serving to equip a person or thing: as (1) the implements used in an operation or activity.

Implement: 1. An article serving to equip. 2. a device used in performance of a task.

Agriculture: The science, art, and practice of cultivating the soil, producing crops, and raising livestock.

Horticulture: The science and art of growing fruits, vegetables, flowers, or ornamental plants.

The second part of the test requires that the goods be a "machine," "equipment," or "implement" which is used for "agricultural" or "horticultural" purposes – as those terms are defined above. See HQ H035968, dated May 5, 2009. As such, to satisfy the second part of the test, the importer must establish that the article is a "machine", "equipment" or "implement" and an agricultural or horticultural pursuit must be identified.

For example, in HQ 952796, dated January 29, 1993, CBP determined that certain plastic sheeting which assists in raising swine by its use as a floor mat, wall liner, and for easy sanitary maintenance, is clearly engaged in an agricultural pursuit, since the care and maintenance of livestock is agricultural in nature. However, in HQ 089936, dated November 15, 1991, CBP determined that "aquaculture", the "farming" of fish for commercial purposes, does not conform to the definition of agriculture and that, therefore, certain fish tanks and their supporting equipment could not be considered agricultural equipment. Also, in HQ 089242, dated August 13, 1991, CBP determined that a sap evaporator used to process sap into maple syrup was not involved in an agricultural pursuit. CBP found that, although the collection of sap was agricultural in nature, the processing of sap into maple syrup, and the use of the evaporator in the process, was not an agricultural purpose, and that this process was more than a simple preparation of a product for market.

Certain insect traps of NY 880892, dated December 14, 1992, which were used to control the insect population in forests and thus helped to conserve the trees, were held to serve an environmental purpose and not an agricultural purpose of heading 9817.00.50, HTSUS.

As those terms are defined above, the next determination to be made is whether the subject merchandise is "machinery", "equipment" or "implement". There have been several rulings in which the importer claimed that his article was within the terms of heading 9817.00.50, HTSUS, but which, upon closer examination, failed to meet the definitions of those terms. Earlier it was mentioned that certain plastic sheeting was found to be accepted as being for use in an agricultural pursuit since articles made from it after importation were used in the care and maintenance of swine; the raising of livestock being a legitimate agricultural purpose. However, since the plastic was imported in material condition, that is, in sheets of 4 feet by 8 feet, and required significant cutting by importers and distributors in the US after importation, CBP determined that the sheeting as imported was not an unfinished article since it did not have the essential character of a complete or finished article. As a sheet, the identity of the article was not fixed with certainty. Even though articles made from it were intended for use in the care and keeping of hogs, in its condition as imported, the plastic sheeting did not have the requisite attributes of an agricultural implement and heading 9817.00.50, HTSUS, was ruled out. See HQ 952796, dated January 29, 1993. A subsequent ruling was issued to the same importer on plastic sheeting imported already cut to the size of an article with a demonstrated agricultural use, in this case as gates/doors to a hog pen. CBP agreed that the cut-to-size pieces had a fixed identity in their imported condition and therefore the goods were within the meaning of the terms of heading 9817.00.50, HTSUS. See HQ 955597, dated May 31, 1994.

Heading 9817.00.60

Heading 9817.00.60 provides for (1) “parts” which are (2) intended for use in articles provided for in headings 8432, 8433, 8434 and 8436. The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States, (“Bauerhin”) 110 F.3d 774 (Fed. Cir. 1997). The first, articulated in United States v. Willoughby Camera Stores, (“Willoughby”) 21 C.C.P.A. 322, 324 (1933) requires a determination of whether the imported item is “an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” The second, set forth in United States v. Pompeo (Pompeo), 43 C.C.P.A. 9, 14 (1955), states that an “imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” Id. at 779 (citing Pompeo, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” Bauherin, 110 F. 3d at 779.

More recently, the Court of International Trade applied the Willoughby and Pompeo tests when it addressed the issue of whether two vase-shaped glass structures were classifiable as glassware in heading 7013, HTSUS, or as parts of lamps in heading 9405, HTSUS. Pomeroy Collection, Ltd., v. United States, 783 F. Supp. 2d 1257, No. 11-78 (Ct. Int'l Trade 2011). In applying Willoughby to the first article, the court ruled that “[w]hen imported, the claimed article is dedicated solely for use in such article, and, when applied to that use, the claimed part meets the Willoughby test.” Ibid. at 1261-1262. In Pomeroy, the court found that first article satisfied the Willoughby test because the hurricane lamp “clearly could not function without the first article in question” since the lamp relied upon the glass structure to hang upon. Id. at 1262. The court found that the second glass structure satisfied Pompeo because the evidence showed that the glass structure contained the flame and enabled the candles to remain lit and to prevent open flames. Thus, the court also found that the second article at issue also satisfied the Willoughby precedent because “when applied to that use” the lamp could not function without the glass structures. Id. In other words, to satisfy the Pompeo test, two prongs must be satisfied: (1) the article must be solely dedicated for use with the product it claimed to be a part of and, (2) when applied to that use, the article cannot function without the article at issue.

Congress did not intend that all items used as a part of agricultural or horticultural equipment should receive duty free treatment. Only those parts which are actually used as parts of machinery of headings 8432, 8433, 8434 or 8436, HTSUS, receive the benefit of duty free entry under heading 9817.00.60, HTSUS.

A ruling which considers the nature of “parts” under heading 9817.00.60, HTSUS, is HQ 952440, dated August 27, 1992. The articles in question were gearboxes and their parts, to be incorporated into rotary mowers, posthole diggers and farm irrigation systems. CBP found that these larger items were the machines, equipment or implements that did the mowing, digging or irrigating in agricultural pursuits. The gear

boxes, although necessary components of the machines, equipment or implements that performed these pursuits, did not themselves fulfill the tasks of mowing, digging and irrigating. Therefore, the gear boxes did not meet the terms of heading 9817.00.50, HTSUS. However, the gear boxes and their parts were not excluded from heading 9817.00.60, HTSUS, by operation of the exclusionary notes. Therefore, if the importer could establish that the rotary mowers, posthole diggers and irrigation systems which incorporated the gear boxes and parts were classified in one of the four mentioned headings of heading 9817.00.60, HTSUS, then the terms of the heading were met. Of the three articles, the importer could only satisfactorily show that the rotary mowers were classified in one of the four necessary headings. CBP determined that rotary mowers for the mowing of grass or hay were classified in heading 8433, HTSUS, and therefore, the gear boxes and parts of gear boxes to be incorporated into rotary mowers would meet the terms of heading 9817.00.60, HTSUS. (**It should be noted that CBP's position on parts of gear boxes, formulated under the Tariff Schedule of the United States (TSUS), was based on the "more than" doctrine, which has been revoked by operation of law. JVC Company of America, Division of US JVC Corporation v. United States, 234 F.3d 1348 (2000).** It is the position of CBP that a subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole. C.F. Liebert v. United States, 60 Cust. Ct. 677, 686-87, 287 F. Supp. 1008, 1014 (1968), noted by the Court of International Trade in Mitsubishi Electronics America v. United States.) However, the gear boxes used with irrigation systems and posthole diggers were not included in heading 9817.00.60, HTSUS. Irrigation systems were classified in heading 8424, HTSUS, as "mechanical appliances ... for projecting, dispersing or spraying liquids ...", and posthole diggers were classified in heading 8430, HTSUS, as "other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting, or boring machinery ...". Headings 8424 and 8430, HTSUS, are not listed in the language of heading 9817.00.60, HTSUS. Therefore, the gear boxes to be used with irrigation systems and posthole diggers were not entitled to duty free treatment under 9817.00.60, HTSUS.

"Parts" of 9817.00.50

Heading 9817.00.50, HTSUS, does not provide for parts. Nonetheless, some importers have claimed that their goods, which are parts, are within the meaning of the terms "machinery", "equipment" and "implements". A case in point is HQ 086019, dated March 24, 1990, in which the merchandise was a choker grapple and the slack-pulling carriages used with log yarders in the logging industry. It was claimed that these goods were machinery, equipment or implements of heading 9817.00.50, HTSUS. The articles were not excluded from heading 9817.00.50, HTSUS, by operation of Note 2, Subchapter XVII, Chapter 98, HTSUS, and were used in a legitimate agricultural pursuit, the transportation of harvested logs. CBP found that the log yarder was the machine, equipment or implement that moved the logs. The choker grapple and the slack-pulling carriage were necessary components of the log yarder. However, they were not the machine, equipment, or implement which fulfilled the task, and by themselves did not accomplish the pursuit of transporting logs, but were merely components of the machine, equipment, or implement which did so. Since they were

held to be parts, and parts are not included in heading 9817.00.50, HTSUS, the two articles did not meet the second part of the test and thereby failed to qualify under heading 9817.00.50, HTSUS.

HQ 086019, dated March 24, 1990, was a reconsideration of NY 834692, dated January 9, 1989, which concerned the classification of front-end loaders designed to be installed on agricultural tractors. The front-end loaders were intended for cleaning barns, moving hay and grain, feeding livestock and other farm uses. The front-end loader incorporated a mounting frame and a specially designed bucket or other attachment designed to be attached to the mounting frame arms in question. The mounting frame was installed onto the tractor and held the bucket or other attachment (hay grapple, pallet fork, bale fork, or spear). The mounting frame and the bucket, when imported together, were classified within subheading 8428.90.00, HTSUS, as "Other lifting, handling, loading or unloading machinery ... Other machinery..." (now, subheading 8428.90.02, HTSUS). The bucket, when imported separately, was classified within subheading 8431.39.00, HTSUS, as "Parts suitable for use solely or principally with the machinery of headings of 8425 to 8430 ... Other ..." If the required use certification of 19 CFR 10.138 had been met, the mounting frame imported with the bucket may have been classified within heading 9817.00.50, HTSUS. However, NY 834692 determined that the bucket, when imported separately, was not classifiable within heading 9817.00.50, HTSUS. CBP stated that the "machinery", "equipment" or "implement" which performed the agricultural pursuit of moving farm yard items was the tractor with the front-end loader. The bucket in question was merely a part of the machine, equipment or implement which performed the agricultural task. Therefore, the bucket was ineligible for classification under heading 9817.00.50, HTSUS.

Functional Units

There is an important aspect to the rule that only those parts which are actually used as parts of machinery will receive the benefit of the duty free provision of heading 9817.00.60, HTSUS. It is important to note that parts of machines classified in headings 8432, 8433, 8434 or 8436, HTSUS, which were classified therein by operation of Section XVI, Note 4, as "functional units," are not necessarily classifiable in heading 9817.00.60. This Note states that:

[w]here a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

A case in point concerns an incomplete electric fence system designed and sold specifically for the purpose of managing livestock. If the fence system is imported in its entirety with the energizer, the fencing, the grounding system and its subcomponents, such a system would be classified in subheading 8436.80, HTSUS as other agricultural

machinery, by operation of Section XVI, Note 4. However, if components of the system were imported separately, they would not be classified in the parts provision of heading 8436, HTSUS, but in their own separate provisions. Because the components of the electric fence system cannot be classified as parts of a functional unit and would be classified in other chapters of the HTS, they would not qualify for duty-free treatment under heading 9817.00.60, HTSUS, because they are not "parts" of that unit for classification purposes. See HQ 960632, dated October 27, 1997.

In summary, it must be established that there is an actual connection between the intended and designed use and function of the item and either an agricultural or horticultural pursuit. Also, it must be determined whether the article **is** the machinery, equipment or implement which accomplishes that pursuit or whether it is a part of machinery classifiable in headings 8432, 8433, 8434 or 8436, HTSUS, and that that machinery is used in an agricultural or horticultural pursuits.

PART 3 - ACTUAL USE CERTIFICATION

The last part of the test calls for compliance with the regulatory requirements governing actual use provisions as authorized by Additional U.S. Rule of Interpretation 1(b), HTSUS, which was introduced at the beginning of this publication. What this means is that a good which is not excluded by the Notes covering heading 9817.00.50 or 9817.00.60, HTSUS, and which satisfies the terms of the relevant headings, will qualify for the duty-free benefit of those headings, if the importer can certify that: (i) at the time of importation, the article is intended for agricultural or horticultural use; (ii) the article is so used; and (iii) proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption. The pertinent CBP Regulations appear in Title 19, Code of Federal Regulations (CFR), part 10.131 through 10.139 (19 CFR §10.131-10.139). These are reproduced in a separate section at the end of this publication.

Actual use is required for agricultural or horticultural purposes in an agricultural or horticultural setting. This does not necessarily have to be on a farm. Indeed, many horticultural uses may be realized in domestic or home garden environments. HQ 953152, dated March 15, 1993, concerned among other things, the use of agricultural weighing scales by veterinarians and by farmers. CBP found that the weighing of farm animals for the purpose of charting growth rates, detecting illnesses, determining sale price, among other things, was a legitimate agricultural purpose. The ruling stated that:

[e]ntries under 9817.00.50 are not limited to actual use by a farmer on his farm. Actual use in an agricultural or horticultural pursuit is the test, regardless of the user. ... Thus, an actual use certification for scales used by a veterinarian on a farm, either his farm or someone else's ... would be

acceptable for 9817.00.50 purposes, while a certification in his personal practice would not.

Thus, it appears that the agricultural or horticultural purpose must take place in a like environment. For example, a tool that might be used both on a farm to assist in the raising of livestock and in a slaughterhouse is one which would be eligible under heading 9817.00.50, HTSUS, in the agricultural environment but not in the marketing environment. The certification by the importer or user should establish both the use and the appropriate agricultural or horticultural location of use.

Sections 10.131 to 10.139 of the CBP Regulations provide the rules for the certification process. Section 10.134 deals with the first of the three conditions required to be met, that is, that actual use for the purpose claimed must be intended at the time of importation. The intended use at the time of importation must be evidenced by a declaration of intent which is filed with the entry for consumption or for warehouse or, by entering the proper actual use subheading of the HTSUS on the entry form. Thus, either a statement by the importer evidencing intended use or entering the merchandise under an actual use provision, in this case either heading 9817.00.50 or 9817.00.60, HTSUS, is required under section 10.134. However, merely entering an article under an agricultural heading demonstrates an "intent of entering the merchandise for the use of agriculture." Thus, if merchandise is entered in a recognized agricultural subheading, such as 8436.80, HTSUS, which provides for other agricultural, horticultural or forestry machinery, and is later found to be classified elsewhere, this use of the agricultural heading would satisfy the requirement to declare intent.

The second and third requirements stipulating that an article be used as intended at entry and that proof be submitted within three years of entry is covered by section 10.138 of the Regulations, which states as follows:

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer shall submit in duplicate in support of his claim for free entry or for a reduced rate of duty a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such a manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

In 1982, the former U.S. Customs Service promulgated a decision covering the guidelines for determining the acceptability of certificates of actual use in U.S. Customs Service Decision (C.S.D.) 83-32 (HQ file 069623), dated November 29, 1982. A copy of this decision is included in a separate section at the end of this publication. Although these guidelines were issued for the Tariff Schedule of the United States (TSUS) items 870.40 and 870.45, the predecessors of headings 9817.00.50 and 9817.00.60, HTSUS, they remain current CBP policy. The language of the headings remains unchanged and no different interpretation of that language is required under the HTSUS. C.S.D. 83-32 and certain rulings based on this decision are the basis of the following discussion.

The burden of satisfying the actual use certification requirement is on the importer. Certifications submitted for each entry must be capable of substantiation by evidence of use that is acceptable to the CBP officer and verifiable from the importer's records or the records of a certifying person which are available to CBP through the importer. This information must be kept for a three-year period following the liquidation of the entry (19 CFR §10.137).

Certification of Machines, Equipment and Implements under Heading 9817.00.50

It is essential that an actual user either be engaged in an agricultural or horticultural pursuit or use the imported equipment only in agricultural or horticultural pursuits. Thus, an actual user may be someone who is not a farmer but whose business is agricultural or horticultural in nature - for example, a contractor whose business is tilling or draining land for agricultural purposes. Similarly, multi-purpose equipment must be intended for use only in agricultural pursuits. For example, a trencher which may be used to dig irrigation ditches on farms in addition to a number of other, non-agricultural applications may be accorded heading 9817.00.50, HTSUS, status if it is intended to be used and is so used only in agricultural pursuits.

Certification of actual use may be accepted at the time of importation for an entry of articles if those articles are the subject of an existing contract of sale to an appropriate end user.

Some machines, equipment and implements are of such a nature that their use other than in agriculture or horticulture would be fugitive. They may not have been classified in the agricultural provisions because there was a more specific provision or because there was no agricultural provision which described them. There are more than 100 rulings on such articles. Greenhouse structures, grain bins, planters and animal vaccinators are but a few examples of such goods. These goods may be certified by the importer either individually or by using a blanket certificate after all such imported articles are sold, whether to end users or to others who distribute to appropriate end users. It should be emphasized that certification of future use or probable use is not sufficient under the language of Additional U.S. Rule 1(b), HTSUS. Congress intended to make certain that the duty-free benefits of these headings would not be misdirected.

CBP has recognized however, that importations of certain of these articles, such as planters, could not feasibly be certified as to their actual use in accordance with the demanding statutory language. These articles are of the type which are imported in large shipments and then distributed to numerous wholesale or resale distributors. A certification by the importer which states that the article(s) may only be used for the agricultural or horticultural use for which they are intended may be accepted at the time of importation. The importer should be made aware that any knowledge of any other use should be brought to the attention of CBP. See 19 CFR 10.138.

Multiple use articles require that the importer certify or obtain a certificate which will indicate knowledge of the actual use or of the individual end user for each item. Certification can be satisfied by accounting and production records as long as the information is sufficient to show the disposition of the imported merchandise.

Certification of Parts under Heading 9817.00.60

Certification of actual use from importers and manufacturers of parts of machinery of headings 8432, 8433, 8434 or 8436, HTSUS, may be made after the imported parts are used in the assembly or manufacture of that machinery. Acceptable accounting procedures must be used to identify the actual use of the goods. Replacement parts for goods of the specified headings may be certified by an importer if he shows evidence that the parts are specifically designed for the machines of the named headings, that other uses are fugitive, and that the parts have been sold to other distributors of the replacement parts or to actual end users. Parts which may be used in machines other than those of the named headings or which have multiple uses may be certified only if the importer has knowledge of each end user or if the importer can submit certificates from each end user. Caution is once again urged with respect to parts or components of systems which are classified in one of the four-named headings as functional units under Section XVI, Note 4, because such parts or components, if imported separately, would not be classified in heading 9817.00.60, HTSUS.

Evidence of the nature of the article, the network and level of distribution, accounting records and other commercial data will be sufficient in most cases to permit certification of the merchandise during the three year window if not at the time of entry.

Below are the CBP Regulations governing actual use and a U.S. Customs Service Decision on guidelines for the acceptability of actual use certificates. Generally, certificates will be accepted in any format so long as they satisfactorily establish the facts of the case and can be proven by the importer if needed.

PERTINENT CBP REGULATIONS

§10.131 Circumstances in which applicable.

The provisions of §§10.131 through 10.139 are applicable in those circumstances in which the rate of duty applicable to merchandise is dependent upon actual use, unless there is a specific provision in this part which governs the treatment of the merchandise. However, specific marking or certification requirements, such as those for bolting cloths in section 10.58, may be applicable to merchandise subject to the provisions of sections 10.131 - 10.139.

Authority: [T.D. 71 - 139, 36 FR 10726, June 2, 1971, as amended by T.D. 86 - 118, 51 FR 22515, June 20, 1986]

§10.132 [Reserved]

§10.133 Conditions required to be met.

When the tariff classification of any article is controlled by its actual use in the United States, three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular subheading of the Harmonized Tariff Schedule of the United States applicable to the merchandise specifies other conditions. The conditions are that:

- 1) Such use is intended at the time of importation.
- 2) The article is so used.
- 3) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

Authority: [T.D. 71 - 139, 36 FR 10726, June 2, 1971, as amended by T.D. 89 - 1, 53 FR 51252, Dec. 21, 1988]

§10.134 Declaration of intent.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by entering the proper subheading of an actual use provision of the Harmonized Tariff Schedule of the United States (HTSUS) and the reduced or free rate of duty on the entry form. Entry made under an actual use provision of the HTSUS may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the HTSUS, provided the port director is satisfied the merchandise will be so used. However, the port director shall require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be used for the purposes stated in the HTSUS.

Authority: [T.D. 71 - 139, 36 FR 10726, June 2, 1971, as amended by T.D. 89 - 1, 53 FR 51252, Dec. 21, 1988]

§10.135 Deposit of duties.

When the requirement of §10.134 has been met the merchandise may be entered or withdrawn from warehouse for consumption without deposit of duty when proof of use will result in free entry, or with deposit of duty at the lower rate when proof of use will result in a lower rate of duty.

Authority: [T.D. 71 - 139, 36 FR 10726, June 2, 1971, as amended by T.D. 84 - 213, 49 FR 41166, Oct. 19, 1984]

§10.136 Suspension of liquidation.

Liquidation of an entry covering merchandise for which a declaration of intent has been made pursuant to §10.134 and any required deposit of duties made, shall be suspended until proof of use is furnished or the 3-year period allowed for production thereof has expired.

Authority: [T.D. 71 - 139, 36 FR 10726, June 2, 1971]

§10.137 Records of use.

- (a) *Maintenance by importer.* The importer shall maintain accurate and detailed records showing the use or other disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established.
- (b) *Retention of records.* The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry.
- (c) *Examination of records.* The records required to be kept by paragraph (a) of this section shall be available at all times for examination and inspection by an authorized Customs officer.

Authority: [T.D. 71 - 139, 36 FR 10726, June 2, 1971]

§10.138 Proof of use.

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer shall submit in duplicate in support of his claim for free entry or for a reduced rate of duty a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise

from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

Authority: [T.D. 71 - 139, 36 FR 10727, June 2, 1971]

§10.139 Liquidation.

(a) *In general.* Upon satisfactory proof of timely use of the merchandise for the purpose specified by law, the entry shall be liquidated free of duty or at the lower rate of duty specified by law. When such proof is not filed within 3 years from the date of entry or withdrawal from warehouse for consumption, the entry shall be liquidated dutiable under the appropriate subheading of the Harmonized Tariff Schedule of the United States.

* * *

Authority: [T.D. 71 - 139, 36 FR 10727, June 2, 1971, as amended by T.D. 89 - 1, 53 FR 51252, Dec. 21, 1988]

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the "Know Before You Go" publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of Importing Into the United States contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. Importing into the United States is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-888-NO-DROGA



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